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UNIFORM RULES FOR CONTRACT BONDS (URCB)

Report of the Secretary-General

1. At its thirty-second session in 1999, the Commission considered, on the basis of a report of the Secretary-General, [1] a request by the Secretary-General of the International Chamber of Commerce (ICC) to endorse the Uniform Rules for Contract Bonds (URCB) (letter of request of 27 April 1999 is reproduced in annex I). However, owing to the fact that late publication of that report had prevented some delegations from carrying out consultations, the Commission felt obliged to postpone consideration of endorsement until the thirty-third session in 2000.

2. The original text of the URCB in English, which has been issued by the ICC as publication no. 524, is reproduced in annex III. Translations into French and Spanish, prepared by the ICC, are reproduced in annex III to the respective language versions of this document. Translations into Bulgarian, Finnish, Icelandic, Korean, Italian, Japanese and Portuguese have also been prepared and published by the ICC.

3. With regard to the reasons that led to the preparation of the URCB, the Foreword to the URCB states:

> "Due to a need in the insurance industry for a uniform set of rules applicable internationally to contract bonds creating obligations of an accessory nature, the ICC Commission of Insurance undertook to elaborate the ICC Uniform Rules for Contract Bonds."

4. For further background information on the URCB, the introduction and general remarks from the ICC publication are set out in annex II.

1/ A/CN.9/459/Add.1. The present note largely reproduces A/CN.9/459/Add.1, since at the thirty-second session of the Commission only the English and the French versions of URCB were available.

ANNEX I

Letter of Ms Maria Livanos Cattaui, Secretary General of the
International Chamber of Commerce

As you may be aware, several years ago ICC published a set of Uniform Rules for Contract Bonds (URCB). I write to ask that UNCITRAL give its formal recognition and endorsement to these rules. ICC is seeking similar endorsements from the World Bank, EU and Inter-American Development Bank.

The URCB deal with Conditional Guarantees, so-called accessory bonds, which relate directly to the underlying contract that is being guaranteed for performance purposes.

Today, the URCB exist in several languages (including English, Spanish, French, Italian, Icelandic, Japanese, Chinese and Korean). The Government of Japan, the International Federation of Consulting Engineers (FIDIC), the Institution of Electrical Engineers (IEE), the International Credit Insurance Association (ICIA), the Association of International French Contractors (SEFI), and the Panamerican Surety Association (PASA), among others, have adopted the URCB as a recommended standard for bonds issued by their members.

The use of URCB as a global framework for bonds will provide the desired uniformity in the domain of security forms, and thus help to promote international trade. We firmly believe that this new model form will be of benefit to the entire business community. Its recognition by public institutions will assist private contracting and facilitate the export and freedom of contracting worldwide.

ANNEX II

ICC UNIFORM RULES FOR CONTRACT BONDS

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INTRODUCTION

These Uniform Rules have been drawn up by an ICC Working Party of members representing the Commission on Insurance and the building and engineering industry for worldwide application in relation to Contract Bonds, being those bonds creating obligations of an accessory nature, where the liability of the Surety or Guarantor arises and is conditional upon an established default on the part of a Contractor (defined in these Rules as the Principal) under the Contract which is the subject matter of the relevant Bond. The Rules set out below will therefore apply where the intention of the parties is that the obligations of the Guarantor will depend upon the duties or liabilities of the Principal under the relevant Contract.

Bonds governed by the ICC Rules set out below are intended to operate so as to confer upon the Beneficiary in each instance security for the performance or execution of contract obligations or payment of any sums which may fall due to the Beneficiary as a result of any breach of obligation or default by the Principal under the Contract. The Bond is intended to ensure that, subject to its financial limits, either the obligations set out in the Contract will be performed or executed, or that upon default, the Beneficiary will recover any sum properly due notwithstanding the insolvency of the Principal or the Principal's failure for any other reason to satisfy or discharge its liability. Accordingly, where a Bond governed by these Rules is in force, the Beneficiary will have the additional assurance of the Guarantor's accessory obligations to ensure that the judgment or award of any competent court or arbitral tribunal is satisfied.

The relationship of the parties under a Bond governed by these Rules number 524 differs from that arising under the ICC Uniform Rules for Demand Guarantees number 458 (the Demand Rules). Where the intention is that the Beneficiary is to obtain security for the obligations of the Principal arising pursuant to the Contract but that the Guarantor's liability shall only arise in case of an established default under that Contract, these Rules should be selected.

General

These Rules are intended to provide a clear and concise scheme to regulate the nature of obligations arising under Bonds and claims procedure. Because the nature of a Bond regulated by these Rules is that the obligations of the parties are related directly to and depend upon the obligations of the parties arising under the Contract, the Rules do not contain detailed provisions dealing with documentary requirements or the problem of unfair calling. In the event of a dispute arising as to the liability of a Guarantor, the Rules contemplate that such dispute will be determined by reference to the Contract. The Guarantor and the

Principal are protected in that liability will arise only where default is established. The Beneficiary is protected by the assurance that any judgment or award will be discharged by the Guarantor if the Principal fails to do so.

The Uniform Rules for Contract Bonds number 524 set out below shall apply where expressly incorporated by the parties in accordance with their detailed provisions. These new Rules depend for their success upon their use by the international business community. The ICC recommends the use of these new Rules which will help to secure uniformity of practice in the operation and enforcement of Bonds.

ANNEX III

ICC UNIFORM RULES FOR CONTRACT BONDS

issued as ICC publication No. 524,
adopted by the ICC Executive Board on 23 April 1993,
come into effect on 1 January 1994

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